

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NANCY LEWIS,

Plaintiff,

v.

CIV. NO. 09-16 MCA/ACT

RIO GRANDE SUN,

Defendant.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS AND RECOMMENDED
DISPOSITION ON APPLICATION TO PROCEED IN FORMA PAUPERIS**

THIS MATTER comes before the Court on Plaintiff's Motion to Proceed *in forma pauperis* with Financial Affidavit pursuant to 28 U.S.C. §1915 [Doc. 2] and Plaintiff's Supplemental Financial Affidavit [Doc. 4]. Because the Court does not have jurisdiction over Plaintiff's Complaint for Copyright Infringement ("Complaint"), the Court will recommend that Plaintiff's Complaint be dismissed without prejudice.

To proceed *in forma pauperis*, without prepaying filing fees, a litigant must submit an affidavit showing that she "is unable to pay such fees...." 28 U.S.C. §1915(a)(1). Screening the case under §1915(e)(2) includes determining whether "the allegation of poverty is untrue" as well as determining whether the action "is frivolous or malicious,...fails to state a claim on which relief may be granted; or [] seeks monetary relief against a defendant who is immune from such relief." §1915(e)(2). "[I]n order to succeed on a motion to proceed IFP, the movant must show a financial inability to pay the required filing fees, as well as the existence of a reasoned, nonfrivolous argument

on the law and facts in support of the issues raised in the motion.” *Lister v. Dep’t Of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005). Plaintiff has shown a financial inability to pay the fees.

Plaintiff’s Complaint asserts two causes of action under copyright law. First she asserts that Defendant published a news story written by her without her byline. Second, Plaintiff alleges that Defendant made unauthorized changes so extensive to her article that these changes rose to a copyright infringement.

Copyright registration is a jurisdictional prerequisite to a copyright infringement action. *La Resolana Architects, PA v. Clay Realtors Angel Fire*, 416 F.3d 1196 (10th Cir. 2005). Section 411 of the Copyright Act states, in pertinent part:

[N]o action for infringement of the copyright in any United States work shall be instituted until registration of the copyright has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the application is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights.

17 U.S.C. §411(a).

Because Plaintiff proceeds *pro se*, the Court liberally construes her Complaint. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, even a liberal reading of the Complaint does not relieve the Plaintiff of alleging sufficient facts on which jurisdiction can be determined. Plaintiff did not allege that her story had been registered. Plaintiff made no allegations concerning registration of the story that was published. Thus, Plaintiff has not alleged sufficient facts to confer jurisdiction upon this Court. As Plaintiff has failed to allege sufficient facts to state a claim that invokes federal jurisdiction, the Court should dismiss her Complaint.

RECOMMENDED DISPOSITION

The Court recommends that Plaintiff's Motion to Proceed *in forma pauperis* with Financial Affidavit pursuant to 28 U.S.C. §1915 be denied. The Court also recommends that Plaintiff's Complaint for Copyright Infringement be dismissed without prejudice.

The parties are further notified that within ten (10) days of service of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. §636(b)(1). A party must file any objections with the Clerk of the District Court within the ten (10) day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.



ALAN C. TORGERSON
UNITED STATES MAGISTRATE JUDGE